

1 Hon. Richard A. Jones
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 RUBIE'S COSTUME COMPANY, INC.,
11 a New York corporation,

12 Plaintiff,

13 v.

14 QUANZHOU HENG KAI BAG CO.
15 LTD.; LUO LI JIANG; BAI JIANG;
16 FENG HUANG; DONGYUAN DENG;
17 NENG LIU; XIA YA QIN; XIA BU;
YUEXI INTERNATIONAL TRADING
COMPANY; and JOHN DOES 1-10,
currently unknown individuals and
entities,

18 Defendants.

19
20 No. 2:18-cv-01531-RAJ

21 **MOTION TO
22 SUBSTITUTE PARTIES**

23 Note on Motion Calendar:
24 **March 12, 2021**

25 **I. INTRODUCTION**

26 In connection with a Chapter 11 bankruptcy proceeding in the United States
Bankruptcy Court for the Eastern District of New York, substantially all of the assets of
plaintiff Rubie's Costume Company, Inc. ("Rubie's") were transferred to Rubies II, LLC
("Rubies II"). Those assets included both the copyright at issue in this litigation and the
claims in this litigation. By this motion, Rubie's and Rubies II seek leave under Fed. R.
Civ. P. 25(c) to substitute Rubies II for Rubie's as plaintiff in this action.



II. FACTS

Rubie's commenced this lawsuit and two related lawsuits on October 18, 2018.¹ In May of 2019, Rubie's moved for alternative service under Fed. R. Civ. P. 4(f)(3) and for leave to file Second Amended Complaint. *See Motion for Alternative Service and for Leave to File Second Amended Complaint* (Dkt. No. 20). That motion was granted in part and denied in part on November 25, 2019. *See Order Granting in Part and Denying in Part Plaintiff's Motion for Alternative Service* (Dkt. No. 23). On February 27, 2020, Rubie's moved to confirm the sufficiency of service, *see Motion to Confirm Sufficiency of Alternative Service* (Dkt. No. 32), which was granted on May 12, 2020. *See Order Granting Motion to Confirm Sufficiency of Alternative Service* (Dkt. No. 34).

Rubie's substantially curtailed operations on March 20, 2020, as the COVID-19 pandemic raged in and around the New York City area.² Declaration of Aleem Aziz in Support of Motion to Substitute Parties ("Aziz Decl.") ¶ 3. On April 30, 2020, Rubie's filed a voluntary petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York. *Id.* ¶ 4. On or about September 25, 2020, the Honorable Alan S. Trust, United States Bankruptcy Judge for the Eastern District of New York, approved the sale of substantially all of Rubie's assets to Rubies II. *Id.* ¶ 5. That sale closed later in the fall of 2020. *Id.* Both the copyright at issue in this litigation, "T-REX COSTUME," Copyright Registration No. VA 2-108-559, and the claims in this litigation were transferred to Rubies II in connection with the asset sale. *Id.* ¶ 7.

¹ The related lawsuits are *Rubie's Costume Company v. Yiwu Hua Hao Toys Co., Ltd., et al.*, No. 2:18-cv-01530-RAJ, and *Rubie's Costume Company v. Zeng Wei Yi, et al.*, No. 2:18-cv-01532-RAJ.

² To the extent Rubie's operations continued after March 20, 2020, they were focused on procuring personal protective equipment for frontline workers. Aziz Decl. ¶ 3.

III. ARGUMENT

The Federal Rules of Civil Procedure provide that “[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” Fed. R. Civ. P. 25(c). Following Rubie’s voluntary Chapter 11 bankruptcy petition, the United States Bankruptcy Court for the Eastern District of New York approved the sale of substantially all of Rubie’s assets to Rubies II. Aziz Decl. ¶ 5. That transaction closed in the fall of 2020. *Id.* Both the copyright at issue in this litigation, “T-REX COSTUME,” Copyright Registration No. VA 2-108-559, and the claims in this litigation were transferred to Rubies II in connection with the Rubie’s-Rubies II asset sale. *Id.* ¶ 7.

Because Rubies II now owns the T-REX COSTUME copyright and all associated rights, including the claims in this litigation, Rubies II is now the proper plaintiff in this case. Accordingly, this Court should authorize substitution of Rubies II for Rubie's as plaintiff in this matter.

IV. CONCLUSION

For the foregoing reasons, this Court should substitute Rubies II for Rubie's as plaintiff in this case. A proposed order is submitted herewith.

DATED: February 22, 2021

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